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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-595

FRANK E. MOTT and MARY R. WILLIAMS,
Executors of the Last Will and Testament
of Walter C. Teagle,

Petitioners,

v

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF CLAIMS

REPLY BRIEF FOR PETITIONERS

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Statement and Question Presented

Petitioners, Executors of the Last Will and Testament of Walter C. Teagle, made payments out of the principal of the Estate to a qualified charitable organization in partial satisfaction of a general pecuniary bequest. Petitioners claimed a distribution deduction for these amounts under Section 661(a) of the Internal Revenue Code of 1954, as amended (herein "Code"), which allows as a deduction to an estate or trust, to the extent of its distributable net income, amounts of income for the taxable year required to be distributed currently and "any other amounts properly paid or credited or required to be distributed for such taxable year. . . ." The sole issue in this proceeding is the availability of such a distribution deduction.

Reply Argument

The gist of Respondent's argument, in its Brief in Opposition to the Petition for Certiorari, is that a literal reading of Section 661(a) of the Code would produce results inconsistent with the statutory framework for the taxation of trusts and estates. Respondent, in its argument, has ignored the fundamental principle of statutory construction that a clear and unambiguous statutory provision is to be applied according to its literal terms. Moreover, contrary to Respondent's contention, the literal application of Section 661(a) of the Code would not produce results incompatible with the statutory framework of the Code or the relevant legislative history.

Respondent asserts at the outset of its argument that "[t]he basic policy underlying the income taxation of estates is that the entire net income of the estate should be taxed only once—either to the estate, or to a taxable beneficiary, or in part to each" (Brief for Respondent at 3). There are several instances in which the net income of an estate will not be taxed to either the estate or its beneficiaries. *United States* v. *Bank of America Nat'l Trust and Savings Ass'n*, 326 F.2d 51 (9th Cir. 1963) and *Estate of Tait*, 9 T.C.M. 122 (1949), discussed at some length in Petitioners' Petition, are but two examples of such instances (Petition at 9-11).

Respondent further asserts that a literal reading of Section 661(a)(2) of the Code, which Petitioners seek, would result in a distribution deduction for any amounts properly paid, whether or not to a beneficiary (Brief for Respondent at 5). Presumably, Respondent contemplates that a literal reading of Section 661 of the Code would result in a distribution deduction for payments of administration expenses, tax liabilities and similar items. The Court of Claims, in its opinion below, expressly held that Section 661(a) of the Code is applicable only to distributions to beneficiaries (Appendix to Petition at 11a). This holding is consistent with the clear and unambiguous language of

the legislative history of Section 661 of the Code and the Treasury Regulations under Section 641(b) and Section 661 of the Code. *See* H.R. Rep. No. 1337, 83rd Cong., 2d Sess. A198 (1954), S. Rep. No. 1622, 83rd Cong., 2d Sess. 347 (1954), and Treas. Reg. Sections 1.641(b)-1 and 1.661(a)-2.

Respondent further asserts

> "By retaining the provision that the charitable deduction from estate income [under Section 642(c) of the Code] is available only if the source of the distribution is gross income, Congress indicated that elimination of the tracing requirement was confined to distributions to noncharitable beneficiaries. Under any other interpretation, Section 642(c) would be superfluous, since all distributions to charitable beneficiaries, from whatever source, would be deductible under Section 661(a)(2)" (Brief for Respondent at 6).

Respondent's assertion is a *non sequitur* and, in fact, there is no reference in the Congressional Committee Reports on Section 642(c) or Section 661 of the Code to Congress' rationale for not eliminating the tracing requirement for charitable contributions of income of an estate or trust. Moreover, Section 661 of the Code, in permitting a distribution deduction for amounts paid, credited or required to be distributed to charity, by no means renders Section 642(c) of the Code superfluous. A charitable deduction under Section 642(c) of the Code is not limited to the amount of distributable net income of the trust or estate for the taxable year but may be fully deducted against the current gross income. Moreover, a deduction is permitted under Section 642(c) of the Code for amounts of gross income "permanently set aside" for charitable purposes during the taxable year, even though not paid, credited or required to be distributed. The liberal provisions of Section 642(c) of the Code are consistent with a Congres-

sional policy favoring charitable contributions. The enactment of this Section should not, however, be construed as indicative of a Congressional intent to preclude a distribution deduction under Section 661 of the Code for amounts of principal distributed to charitable organizations.

Respondent also maintains that the allowance of a distribution deduction under Section 661 of the Code would produce an anomalous result inconsistent with the statutory framework of the Code, as a deduction would be available on both the estate tax return and the fiduciary income tax return for a portion of the amounts in issue (Brief for Respondent at 4 and 5). It is established, however, that the theory and the incidence of the income tax and the estate tax are divergent. Income tax provisions and estate tax provisions are to be read independently and are not to be construed *in pari materia*. This principle was well stated in an early decision of the Board of Tax Appeals in *Robert J. Kleberg*, 31 B.T.A. 95 (1934), *acquiesced in*, XIII-2 Cum. Bull. 11 (1934), wherein the Board held:

> "Deductions allowable in computing the estate tax are determined under the provisions of the statute imposing an estate tax. Deductions allowable in computing income tax are determined under the provisions of the statute imposing the income tax. If an item is properly deductible under some provision of the estate tax law in determining the net estate subject to the tax, and the same item is also deductible under a provision of the income tax law in determining the net income of the estate subject to income tax, that fact does not militate against the allowance in either levy." 31 B.T.A. at 100.

With the enactment of the Internal Revenue Code of 1954, a specific provision, *i.e.*, Section 642(g) of the Code, was added in which Congress stated its express intent as to items which would not be allowable as deductions for

purposes of both the estate tax and the income tax. Section 642(g) of the Code is applicable solely to the administration expenses of an estate and to losses incurred by an estate during the period of administration.

Section 642(g) of the Code expressly excepts from its terms deductions for taxes, interest, business expenses and other items accrued at the date of a decedent's death. Thus, such items may be deducted as claims against the estate on the estate tax return and also as deductions in respect of a decedent on the fiduciary income tax return.

Another instance in which an item is deductible for purposes of both the estate tax and the income tax is the payment by an estate of alimony obligations. In Rev. Rul. 67-304, 1967-2 Cum. Bull. 224, involving a divorce decree obligating a decedent to pay alimony to his wife for her life, the Internal Revenue Service ruled that the commuted value of the payments was deductible on the estate tax return as a claim against the estate and further ruled that any such payments were deductible on the fiduciary income tax return as distribution deductions under Section 661 of the Code. *Laughlin's Estate* v. *Commissioner,* 167 F.2d 828 (9th Cir. 1948), *rev'g on this issue* 8 T.C. 33 (1947); *Estate of Daniel G. Reid,* 15 T.C. 573 (1950).

Similarly, brokerage commissions and other sales expenses incurred by an estate in selling assets to meet administration expenses are deductible on the estate tax return as an administration expense and may be offset against the sale proceeds of the property in computing taxable income on the fiduciary income tax return. *Commerce Trust Co.* v. *United States,* 438 F.2d 111 (8th Cir. 1971), *aff'g per curiam* 309 F. Supp. 1317 (W.D. Mo. 1969); *Commissioner* v. *Estate of Bray,* 396 F.2d 452 (6th Cir. 1968), *aff'g* 46 T.C. 577 (1966), *acquiesced in,* 1971 Int. Rev. Bull. No. 24, at 5; Rev. Rul. 71-173, 1971 Int. Rev. Bull. No. 14, at 12, *rev'g* Rev. Rul. 56-43, 1956-1 Cum. Bull. 210.

If it is determined that a double deduction should not be permitted for both income and estate tax purposes, this result should be effected through a statutory amendment by the Congress. Such an amendment was enacted by the Congress in 1966 to prevent a double deduction under the facts presented in *Commissioner* v. *Burrow Trust,* 333 F.2d 66 (10th Cir. 1964). In the *Burrow Trust* case, trustees' fees, which were incurred during the administration of an estate and paid by the trustees pursuant to the trust instrument, were held to be deductible both as an administration expense of the estate and as an administration expense of the trust. Section 642(g) of the Code was subsequently amended to provide that administration expenses allowed as a deduction on the estate tax return are not deductible in computing the taxable income of the estate "or any other person." *See also Commissioner* v. *Brown,* 380 U.S. 563 (1965).

In conclusion, Respondent also asserts that a literal reading of Section 661 of the Code, which Petitioners seek, may confer a tax benefit on beneficiaries of estates which distribute principal to charitable organizations. If, however, the application of the terms of a statutory provision produce a result which may have been unintended by the Congress, the remedy lies in corrective legislation by the Congress.

Respectfully submited,

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December 9, 1972